

SERVED: June 22, 1994

NTSB Order No. EA-4198

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of June, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12119
v.)	
)	
MICHAEL S. BAKHTIAR,)	
)	
Respondent.)	
)	

ORDER ON PETITION FOR MODIFICATION

The Administrator seeks modification of NTSB Order EA-4082 (served February 15, 1994) in an effort to clarify the basis upon which we reinstated the revocation of respondent's airman certificate. Respondent has not replied. We grant the request.

In this proceeding, the Administrator revoked respondent's pilot and medical certificates for violations of FAR sections 61.15 and 67.20(a)(1) in connection with his 1980 convictions for crimes related to the possession and distribution of heroin.¹ The law judge affirmed the 61.15 charge only and reduced the sanction to a six-month suspension. Our opinion and order reinstates the revocation. It also references FAR 61.15 (which authorizes a sanction of either suspension or revocation), the FAA sanction guidelines, the egregious nature of the underlying narcotics offenses, and Board precedent.

¹It was not alleged that an aircraft was utilized in the commission of these crimes.

The Administrator has expressed concern that our decision is unclear and may erroneously be interpreted to have rested in part on sanction guidelines promulgated in 1989 and 1990, thereby potentially creating an issue of a retroactive policy application. We seek herein to clarify the basis for our decision.

First, we note that the plain language of FAR 61.15 indicates that revocation of an airman's pilot and medical certificates is a possible consequence of a drug conviction. Next, precedent supports the revocation of an airman's certificates following a conviction for an egregious drug-related offense, even when an aircraft was not utilized in the commission of the offense.² See, e.g., Administrator v. Piro, NTSB Order No. EA-4049 (1993); Administrator v. Hernandez, NTSB Order No. EA-3821 (1993), aff'd 15 F.3d 157 (10th Cir. 1994); Administrator v. Kolek, 5 NTSB 1437 (1986), aff'd 869 F.2d 1281 (9th Cir. 1989). The Administrator's sanction guidelines simply mirror the revocation policy developed by precedent and authorized by regulation. We mentioned both in our decision, as they both effect the same result.

Given the serious nature of the conviction (two counts of conspiracy to violate federal narcotics laws; six counts of distribution of heroin; two counts of use of a telephone to facilitate possession and distribution of heroin; and interstate travel in aid of racketeering), revocation is a sanction completely consistent with precedent. Though we discussed the sanction guidelines at length, precedent forms the basis for our opinion.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's petition is granted; and
2. Our decision served February 15, 1994, is clarified as set forth here.

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²In Administrator v. Piro, we stated, "any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation." Id. at 4.